

Senate Rural and Regional Affairs and Transport References Committee

Performance of Australia's Dairy Industry and the profitability of Australian Dairy farmers since deregulation in 2000

Response to a question taken on notice at a public hearing

Canberra, 19 June 2020

Witness: Dairy Connect

Response received 29 June 2020

Question 1:

Proof Committee Hansard, p. 3

Senator STERLE (Chair): To wrap my part up, Mr Morgan and Mr Forbes, could you provide to the committee what work you have undertaken with ADF? I don't believe there's any need to take that on notice at all, because it is taxpayer's dollars and I know no-one would have a problem showing up where taxpayer's dollars have been spent. Mr Morgan, if you could get that information to the committee by Friday 3 July, that would be appreciated.

Answer:

The Chief Executive of Dairy Connect has had a number of telephone discussions with the Chief Executive of Australian Dairy Farmers in relation to issues associated with the Australian Dairy Industry generally. Dairy Connect has not been specifically requested to provide assistance and/or information in relation to the matters that they had been requested to provide to the federal government arising from the last federal election.

**Senate Rural and Regional Affairs and Transport References
Committee**

**Performance of Australia's Dairy Industry and the
profitability of Australian Dairy farmers since deregulation
in 2000**

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Canberra, 19 June 2020

Witness: Dairy Connect

Response received 29 June 2020

Question 1:

Proof Committee Hansard, p. 4

Senator McDONALD: Mr Cochrane, would you be able to provide a copy of that contract as evidence for the committee?

Answer:

Please find attached a copy of the template milk supply agreement of Lactalis for the NSW Region (a copy of which can also be accessed from their website <https://lactalis.com.au/milk-supply-agreements/>). The matter to which the Committee referred to may be found at clause 12.



Milk Supply Agreement – New South Wales – New Supplier

**LACTALIS AUSTRALIA PTY LTD
ABN 56 072 928 879**

and

THE SUPPLIER LISTED IN ITEM 1 OF SCHEDULE 2

Schedule 1 - Statement of Circumstances

Background

The Competition and Consumer (Industry Codes—Dairy) Regulations 2019, (the “Code”) requires a Processor to make an offer to buy milk for a specified period and at the time of the offer make available to the farmer in writing the proposed agreement, pricing, any applicable conditions of supply such as quality and collection protocols and standards. Importantly the Code requires the processor to accept any offer of supply from a farmer that complies with the Statement of Circumstances.

Therefore the Lactalis milk supply offer comprises 3 separate but related documents;

1. The Milk Supply Agreement
2. The Milk Supply Handbook relevant to that dairy/Milk Payment region
3. The Quality Assurance Scheme applicable to that region

Statement of Circumstances

Condition	Acceptable Criteria
1. Specified Regions	From the Hunter Valley in the North southwards to Milton on the south coast. Does not include the Wagga Wagga region and Central West Dubbo region.
2. Total volume to be procured	The total direct farm Milk supply for each of the specified regions shall be an aggregate of no more than the following specified litres in a 12 month period. <u>This agreement is intended for new suppliers only, as existing suppliers are under existing agreements for 2020/21.</u> = 10 Million litres
3. Supply Period	1 July 2020 to 30 June 2021
4. Contract Type	The supplier can elect one of 2 options for their contract: 1. <u>Exclusive Supply</u> - 100% of the milk on farm is made available to Lactalis for collection (excluding milk retained for on farm for calves or dumped due to quality concerns) 2. <u>Non Exclusive Supply.</u> a. a supplier must supply a minimum volume each month (Minimum Monthly Volume). This will be 90% of each of the prior financial year's monthly farm supply b. For any month, any monthly volumes above this minimum monthly supply volume may be sold by the Supplier to another milk processor. c. The price paid by Lactalis is set out at Item 4.2 in Schedule 4 for Non Exclusive supply.

5. Individual Farm Volumes	Individual farms must be able to produce a minimum collection volume (assuming skip a day) under both an Exclusive Contract and non-exclusive supply agreement, as specified in the Milk Supply Handbook
6. Existing contractual obligations	Lactalis may have milk purchasing agreements with other companies/supply co-operatives to help manage surplus and deficit volumes from time to time.
7. Continuing Farms	In assessing offers from farms wanting to supply Lactalis, the company will give preference to existing suppliers wishing to continue as existing supply.
8. Newly establishing farms	This offer is not open to farms that are not operational at the time this offer is published. New suppliers wishing to enter the industry should make contact with a Lactalis Supplier Relationship Manager for separate consideration.
9. Volume Limits	Lactalis reserves the right to decline the offer of supply from large farms (>10M litres per annum) given the risk profile desired for that particular region. This will not apply to continuing farms.
10. Growth limits	<p>The milk supply for this region is predominantly for processing into packaged milk which has a known finite demand. Milk is not primarily sourced for export.</p> <p>Historically Lactalis has not imposed restrictions on farm growth within this region.</p> <p>Where a farm indicates its intention to grow milk supply significantly during the contract period (more than 20%) to an overall level that Lactalis believes will create a milk excess for it in the region, Lactalis may elect to either decline the offer to supply from the farm or negotiate a separate non-exclusive agreement.</p> <p>Where a farm fails to advise Lactalis of significant growth plans (more than 20%) before entering into an agreement it will constitute a breach of good faith bargaining.</p>
11. Milk Collection Efficiency	The cost of milk delivered to the factory is the key determinate of competitive milk supply. Lactalis may decline an offer of supply where it believes the cost of milk collection would be detrimental to its overall milk costs delivered factory. In 2020/21 this is not applicable to existing suppliers.
12. Processor reputation	Lactalis reserves the right to decline an offer of supply where, in the opinion of Lactalis, the supplier has engaged in public denigration of processors or key customers.
13. Milk Supply Profile	Lactalis' primary activity and milk demand in this region is the processing of milk into short shelf life chilled packaged milk. Demand

	<p>for these products is relatively consistent week to week across the whole year.</p> <p>As a consequence, Lactalis seeks milk supply with a relatively flat milk profile. Lactalis reserves the right to decline any offer for supply from a supplier with a significant seasonal milk supply profile (More than 1.8 : 1 peak to trough ratio).</p>
14. Minimum Pricing Justification	<p>Lactalis minimum prices for the period are set on the following basis:</p> <ul style="list-style-type: none"> (a) The need for Lactalis to be competitive in the Australian retail and wholesale markets for milk and dairy products, given milk purchases are a material determinant of Lactalis' cost of production for those products; (b) Prices offered or expected to be offered by other buyers of milk across the relevant region; (c) Given the national market for milk in Australia, any price in this region would need to consider the price of milk from other regions plus freight; (d) The monthly prices also reflect, in part, the variation in cost of milk production across the season to encourage a more consistent milk supply profile and enable Lactalis to meet its daily consumer demand; (e) Lactalis has contractual obligations to supply numerous retail customers and distributors and believes it essential that its milk supply agreements are exclusive to enable Lactalis to manage the risk associated with meeting daily fresh milk demand from its customers and consumers. Customers and consumers have an expectation that Lactalis products are available daily, all year round; (f) Quality bonus is an incentive offered to suppliers to encourage higher quality milk and to reward highest quality milk; (g) Volume incentives paid reflect both the economic efficiency of large farm collections verse smaller farms but also the opportunity cost of replacing larger farms with many smaller farms; (h) Logistics proximity incentives or levies (where paid) reflect a sharing with the supplier of the benefit or cost impact of milk collection closer to the processing site (benefit) or significant distance (levies) verse average farm distances for the region; (i) Milk collection charges (where applied) reflect the underlying fixed cost of stopping a tanker to do a milk pick-up; (j) Non-Exclusive Pricing (and deduction for non-supply) reflects the risk of Lactalis potentially being required to either, source additional volumes of milk on the spot market, or purchasing extra milk with higher overhead costs at the peak of the season. This risk

	<p>arises from the uncertainty of milk supply by the potential of non-exclusive milk supply to vary by 10% day to day; and</p> <p>(k) Non-Exclusive pricing reflects an increase in milk management/administration costs to Lactalis.</p>
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Schedule 2 - Summary and Details of Parties and Selection of Pricing

1.	Supplier	Farm Number: _____ Supplier name: _____ Trading name: _____ ABN: _____ ACN: _____	
2.	Property	Address for documents (including email): _____ _____ E Mail: _____ Contact Phone: _____ Address for milk collection (Dairy): _____ _____	
3.	Commencement Date (clause 1.1)	1 July 2020	End Date: 30 June 2021
4.	Selected Agreement Type:	<u>Select one (1) only</u> <input type="checkbox"/> Exclusive Agreement (Item 5 not applicable) <input type="checkbox"/> Non-Exclusive Agreement (Please complete item 5)	
5.	Minimum Monthly Volume	As set out in Schedule 5	
6.	Purchaser	Lactalis Australia Pty Limited (including email): farmpayments@au.lactalis.com P.O. Box 3012 South Brisbane QLD 4101 Telephone: 07 3840 0247 ABN 56 072 928 879	
7.	Territory (clause 1.1)	New South Wales Payment Region	

Schedule 3 - Signature Page

Supplier Section:

If being signed by an Individual, Trust or Partnership:

Signed for and on behalf of the Supplier by its authorised representatives:	
..... Signature of Authorised Representative Signature of Witness
..... Name of Authorised Representative Name of Witness
..... Date	
..... Signature of Authorised Representative Signature of Witness
..... Name of Authorised Representative Name of Witness
..... Date	

If being signed by a Company:

<p>Executed by the Supplier in accordance with section 127(1) of the Corporations Act 2001 by:</p>	
<p>..... Signature of Director</p>	<p>..... Signature of Director/Company Secretary</p>
<p>..... Name of Director</p>	<p>..... Name of Director/Company Secretary</p>
<p>..... Date</p>	<p>..... Date</p>

Lactalis

<p>Signed for and on behalf of Lactalis Australia Pty Ltd ABN 56 072 928 879 by its authorised representative:</p>	
<p>..... Signature of Authorised Representative</p>	<p>..... Signature of Witness</p>
<p>..... Name of Authorised Representative</p>	<p>..... Name of Witness</p>
<p>..... Date</p>	

Schedule 4 - Milk Price

The rates and prices set out below, subject to any applicable quality adjustments specified in the Quality Provisions, are the minimum prices and rates for the Supply Period. The base rates below applied depend on the Suppliers choice of Exclusive or Non Exclusive supply.

4.1 Exclusive Agreement Pricing – Base rates

Base Payment & Composition Adjustment					
Standard Litre – Milk Fat @ 3.8% & Protein @ 3.1%					
Pricing Period	Standard Base (cpl)	Butterfat (cpl for every 0.01% over/under 3.8%)		Protein (cpl for every 0.01% over/under 3.1%)	
		Over	Under	Over	Under
January (Summer)	47.10	0.051769	-0.045350	0.082831	-0.090700
February (Summer)	47.10	0.051769	-0.045350	0.082831	-0.090700
March (Autumn)	50.55	0.051769	-0.045350	0.082831	-0.090700
April (Autumn)	50.55	0.051769	-0.045350	0.082831	-0.090700
May (Autumn)	50.55	0.051769	-0.045350	0.082831	-0.090700
June (Winter)	48.10	0.051769	-0.045350	0.082831	-0.090700
July (Winter)	48.10	0.051769	-0.045350	0.082831	-0.090700
August (Winter)	48.10	0.051769	-0.045350	0.082831	-0.090700
September (Spring)	46.10	0.051769	-0.045350	0.082831	-0.090700
October (Spring)	46.10	0.051769	-0.045350	0.082831	-0.090700
November (Spring)	46.10	0.051769	-0.045350	0.082831	-0.090700
December (Spring)	47.10	0.051769	-0.045350	0.082831	-0.090700

4.2 Non-Exclusive Agreement Pricing - Base rates

Base Payment & Composition Adjustment					
Standard Litre – Milk Fat @ 3.8% & Protein @ 3.1%					
Pricing Period	Standard Base (cpl)	Butterfat (cpl for every 0.01% over/under 3.8%)		Protein (cpl for every 0.01% over/under 3.1%)	
		Over	Under	Over	Under
January (Summer)	45.10	0.051769	-0.04535	0.082831	-0.0907
February (Summer)	45.10	0.051769	-0.04535	0.082831	-0.0907
March (Autumn)	48.55	0.051769	-0.04535	0.082831	-0.0907
April (Autumn)	48.55	0.051769	-0.04535	0.082831	-0.0907
May (Autumn)	48.55	0.051769	-0.04535	0.082831	-0.0907
June (Winter)	46.10	0.051769	-0.04535	0.082831	-0.0907
July (Winter)	46.10	0.051769	-0.04535	0.082831	-0.0907
August (Winter)	46.10	0.051769	-0.04535	0.082831	-0.0907
September (Spring)	44.10	0.051769	-0.04535	0.082831	-0.0907
October (Spring)	44.10	0.051769	-0.04535	0.082831	-0.0907
November (Spring)	44.10	0.051769	-0.04535	0.082831	-0.0907
December (Spring)	45.10	0.051769	-0.04535	0.082831	-0.0907

Deduction for Non Supply – Non Exclusive Agreement

Non- Exclusive Deduction for non-supply of contracted minimum monthly volume	Per litre
Rate per litre not supplied	15 cents

4.3 Other Payments/Deductions

The following Payments in this Schedule 4 apply to Exclusive and Non Exclusive Payments

Milk Quality (refer Handbook for detail)

Quality Payment / Penalty			
Percentage of base rates on consignment basis			
BMCC Test Result	Quality Percentage	Bactoscan Test Result	Quality Percentage
≤ 200	+3%	≤ 80	0%
201 – 300	0%	81 – 150	-5%
301 – 400	-10%	151 – 300	-20%
401 – 600	-20%	301 – 400	-30%
> 600	-30%	> 400	-40%
<i>First 3 results > 200 = advisory</i> <i>(Paid @ +3%)</i> <i>Where the weighted avg for the month</i> <i>≤ 200,000, the 3% bonus will be paid on all milk for the month</i>		<i>First 3 results > 80 = advisory</i> <i>(no penalty)</i>	

Contract Incentive

Contract Incentive	
1 Year Commitment	0.50 Cents per Litre

Volume Incentive - The volume incentive is paid on production supplied within the calendar month

Volume Incentive		
Total kilograms of milk fat & protein for the month	\$/kg Milk fat	\$/kg Protein
Less than 16,250 kilograms	0.20	0.40
16,251 kilograms to 20,000 kilograms	0.23	0.45
20,001 kilograms to 25,000 kilograms	0.25	0.50
25,001 kilograms to 30,000 kilograms	0.28	0.55
30,001 kilograms to 45,000 kilograms	0.30	0.60
45,001 kilograms to 55,000 kilograms	0.35	0.70
55,001 kilograms to 99,999 kilograms	0.40	0.80

Tenure - The tenure payment is paid on milk fat and protein supplied within the calendar month

Tenure Incentive	
Continuous Years Supply	Cents per Litre
1 & 2 years	0.50
3 & 4 years	0.75
5+ years	1.00

Logistics Proximity Incentive

Logistics Proximity Incentive	
Zone	Cents per Litre
Southern Highlands (FSH)	2.00
South Coast (FSC)	2.00
Milton Region (FMT)	2.00
Hunter Valley & Upper Hunter (FHV & FUH)	2.00

Schedule 5 – Non Exclusive Agreement - Minimum Monthly Volume

Base Year: July 2019 to 2020

Month	Total Volume (litres) 2019 - 2020	Minimum Monthly Volume to be supplied to Lactalis for 2020/2021 <u>(90% of prior year monthly volume)</u>
July		
August		
September		
October		
November		
December		
January		
February		
March		
April		
May		
June		

Schedule 6 - Milk Supply Agreement – Terms and Conditions

Parties

LACTALIS AUSTRALIA PTY LTD ABN 56 072 928 879 of Level 5, 35 Boundary Street South Brisbane QLD 4101 (**Lactalis**)

The Supplier listed in item 1 of Schedule 2 (Supplier)

Background

- A** Lactalis carries on business as a milk processor. The Supplier carries on a dairy farm business.
- B** Lactalis wishes to purchase the Farm Milk from the Supplier, and the Supplier has agreed to supply the Farm Milk to Lactalis, on the terms of this Agreement.

The parties agree

1. Definitions and interpretation

1.1 Definitions

Terms defined and abbreviations allocated in the Handbook have the same meaning when used in this Agreement and:

Agreement means this agreement including each of the Schedules.

Code means the *Competition and Consumer (Industry Codes – Dairy) Regulations 2019 (Cth.)*.

Commencement Date means the date set out in Item 3 of Schedule 2.

End Date means the date set out in Item 4 of Schedule 2.

Exclusive Supply means all Farm Milk is supplied to Lactalis.

Farm Milk means all the Milk that is produced by the milking herd of cows on the Property during the Supply Period excluding Personal Use Milk.

Force Majeure means any cause, matter or thing beyond the affected party's reasonable control, including, without limitation, strikes lockouts, labour disputes, acts of God or nature, acts of governments or their agencies, fire, flood, storm, riots, pandemic, power shortages or power failure, or disruption by war or sabotage.

Handbook means the Lactalis document entitled "Milk Supplier Handbook – Victoria, Tasmania, South Australia & Southern Riverina , 2020", available on the website farmers.parmalat.com.au and emailed to you with this Agreement.

Lactalis Complaints Handling Officer means the relevant Lactalis Regional Supplier Services Manager.

Material Breach means:

- (a) a breach of any of the following Handbook and QDairy provisions (and subsections):

- (i) Compliance with Legislation (Handbook clause 3);
- (ii) Minimum Supply Requirement (Handbook clause 5);
- (iii) Processor Reputation (Handbook clause 6);
- (iv) Competency and Training (QDairy Page 8);
- (v) Traceability of Milk (QDairy Page 10);
- (vi) Veterinary Medicines (QDairy Page 12);
- (vii) Agricultural Chemicals (QDairy Page 14);
- (viii) Cleaning Chemicals (QDairy Page 16);
- (ix) Stockfeed (QDairy Page 18);
- (x) Effluent (QDairy Page 20);
- (xi) Water (QDairy Page 22);
- (xii) Premises (QDairy Page 24);
- (xiii) Milk Cooling (QDairy Page 25);
- (xiv) Milk Quality Specifications (Handbook clause 9);
- (xv) Quality Accreditation and Other Standards (Handbook clause 9.19);
- (xvi) Milk Temperature Policy (Handbook clause 9.7);
- (xvii) Age of Milk (Handbook clause 9.8);
- (xviii) Fat and Protein (Handbook clause 9.6);
- (xix) Microbiological and Contaminant Standards (Handbook clause 9.6);
- (xx) Tanker Access (Handbook clause 10);
- (xxi) Animal Health and Husbandry (Handbook clause 12);
- (xxii) Animal Welfare (Handbook clause 13);
- (xxiii) Australian Animal Welfare Standards and Guidelines – Cattle (Handbook clause 13);
- (xxiv) Enzootic Bovine Leucosis (Handbook clause 14)
- (xxv) Oestradiol restrictions (Handbook Clause 15); and
- (xxvi) Recombinant Bovine Somatotropin (rbST) (Handbook clause 16);
- (b) A material breach of any relevant environmental laws or regulations;
- (c) A failure to pay pursuant to clause 7 of this Agreement;
- (d) A breach of Clause 13.5 of this Agreement;
- (e) Failure to supply Milk to Lactalis; and

(f) The Supplier ceasing to produce Milk on the Property on a permanent basis.

Mediation Adviser means the mediation adviser appointed pursuant to section 44(1) of the Code.

Milk means the unprocessed lacteal fluid product of dairy cows.

Minimum Price means:

- (a) For Exclusive Milk Supply, the price set out in Item 4.1 of Schedule 4; or
- (b) For Non-Exclusive Milk Supply, the price set out in Item 4.2 of Schedule 4.

Minimum Monthly Volume means the minimum amount of Farm Milk to be supplied to Lactalis as set out in Schedule 5.

Non-Exclusive Milk Supply means the supply of Farm Milk to Lactalis by the Supplier pursuant to Item 4.2 of Schedule 1 and clause 3.2.

Personal Use Milk means any Milk produced at the Property which is to be used for personal consumption on the Property or to feed calves on the Property.

Price means the price that is payable by Lactalis to the Supplier for the supply of the Farm Milk for the Supply Period calculated in accordance with Schedule 4.

Property means the property identified in item 2 of Schedule 2.

Quality Provisions means the provisions as set out in the Handbook.

Schedule means a schedule to this Agreement.

Supply Period means the period commencing on the Commencement Date and ending on the earlier of the End Date or the date this Agreement is terminated in accordance with its terms.

Territory means the territory specified in item 7 of Schedule 2.

1.2 Interpretation

In this Agreement unless the context indicates a contrary intention:

- (a) a reference to legislation or a legislative instrument includes any amendment, re-enactment or replacement of that legislation or instrument, and includes any instrument made under the legislation or instrument;
- (b) the word "person" includes a natural person and anybody or entity whether incorporated or not;
- (c) the words "in writing" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (d) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (e) headings are for convenience and do not affect interpretation;
- (f) a reference to a party, item, paragraph, Schedule or annexure is a reference to a party, clause, paragraph, Schedule or annexure to or of this Agreement;

- (g) a reference to a clause is a reference to a clause in the Schedule 6; and
- (h) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions.

2. Compliance with the Code

Any provision in this Agreement which is invalid or unenforceable under the Code is to be read down if possible, so as to be valid and enforceable, and if that is not possible, the provision shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

3. Agreement for exclusive supply

3.1 Exclusive supply

- (a) Subject to clause 3.3, the Supplier agrees that it will exclusively supply the Farm Milk to Lactalis during the Supply Period.
- (b) Lactalis agrees that it will acquire the Farm Milk from the Supplier.
- (c) Lactalis will collect the Farm Milk from the Supplier at the address for milk collection set out in item 2 of Schedule 2 each day or, if notified by Lactalis to the Supplier at any time, every second day, during the Supply Period.

3.2 Agreement for non-exclusive supply

- (a) Subject to clause 3.3, the Supplier agrees that it will, each month of the Supply Period, supply to Lactalis the Minimum Monthly Volume.
- (b) Subject to clause 3.2(c), if in any one month the Minimum Monthly Volume requirement is not met, a set deduction per litre will apply for the volume not supplied under this requirement to reach the Minimum Monthly Volume . This deduction is specified in Item 4.2 of Schedule 4
- (c) Where a farm’s monthly production is less than the previous financial year, 90% of the monthly total farm supply must be supplied to Lactalis. Where a farm ’s monthly production is greater than the previous financial year, the minimum monthly volume to be supplied to Lactalis remains the Minimum Monthly Volume.
- (d) For any month, the Supplier may, for Farm Milk in excess of the Minimum Monthly Volume sell such Farm Milk to another party.
- (e) During the Term, the volume to be supplied by the Supplier to Lactalis for the coming month must be confirmed by the supplier in writing by the 15th day of the prior month.
- (f) Lactalis agrees that it will acquire the agreed Minimum Monthly Volume of Farm Milk from the Supplier and any additional volume offered within the agreed growth parameters (Item 10 Schedule 1).
- (g) Lactalis will collect the Farm Milk from the Supplier at the address for milk collection set out in item 2 of Schedule 1 each day or, if notified by Lactalis to the Supplier at any time, every second day, during the Supply Period.

3.3 Retention for personal use

The Supplier may retain, and not supply to Lactalis, any Milk produced at the Property which is to be used for personal consumption on the Property or to feed calves on the Property.

4. Cooling Off Period

The Supplier may rescind this Agreement by giving written notice of such rescission to Lactalis at any time before 11.59 pm on the fourteenth day after the day on which the last party to sign this Agreement did so.

5. Supplier's warranty

The Supplier warrants that as at the Commencement Date, it complies with all applicable laws and regulations and holds all licences necessary to supply Milk to Lactalis.

6. Supplier has read the Handbook and QDairy

The Supplier:

- (a) agrees that it has read the Handbook and QDairy and understands the obligations imposed on it under the Handbook and QDairy; and
- (b) without limiting any other obligations of the Supplier, agrees that the following provisions of the Handbook are critical obligations of the Supplier:
 - (i) clause 3, which requires the Supplier to comply with all relevant legislation, regulations and accepted industry practices;
 - (ii) clause 5, which imposes minimum supply obligations on the Supplier;
 - (iii) clause 9 and subclauses, which impose obligations on the Supplier in relation to the quality and age of the Milk;
 - (iv) clause 9.15, which imposes obligations on the Supplier in relation to the use of genetically modified organisms at the Property; and
 - (v) clause 10, which impose obligations on the Supplier in relation to Lactalis' access to the Property;
 - (vi) clauses 12 and 13, which imposes obligations on the Supplier to ensure the welfare of the animals on the Property; and
- (c) acknowledges that Lactalis has rights under the Handbook and QDairy to reject the supply of the Milk from the Supplier, on either a temporary or permanent basis, in the circumstances set out in the Handbook and QDairy.

7. Payments to Supplier

7.1 Pricing Schedule

Subject to this clause 7, Lactalis will pay to the Supplier the Price for the Farm Milk.

7.2 Adjustments to payments

Without limiting any other rights that Lactalis might have for any breach of this Agreement (including for the avoidance of doubt any rights under any provision of the Handbook), the Supplier agrees that Lactalis may reject any of the Farm Milk, or apply any applicable quality adjustments specified in the Handbook to the Price otherwise payable in accordance with this clause 7 for the supply of the Farm Milk.

7.3 Payment for Supply

- (a) Payment will be made on the 15th day of the month following supply. However, if the 15th falls on a weekend or public holiday, payment will be made on the last working day prior to the 15th.
- (b) All Supplier payments will be made to a designated bank account. Any Supplier failing to provide bank account details will be charged an administrative fee. Lactalis will hold all monies until such documentation is received. All instructions regarding payment are the responsibility of the Supplier. In the event a payment error is made, an adjustment will be made in the following month's payment.
- (c) Share Farm or Lessee Payments

This Agreement is between Lactalis and the Supplier. The Supplier may determine that a percentage payment is to be made on behalf of a sharefarmer or lessee. Details of any such payments are to be provided in writing to Lactalis.

7.4 Bank account details and GST

- (a) All payments to be made by Lactalis in accordance with this clause 7 will be paid to:
 - (i) the bank account previously nominated by the Supplier to Lactalis; or
 - (ii) to such other account notified by the Supplier to Lactalis, such notification to be given no later than 14 days prior to the date on which a payment is required to be made.
- (b) The parties agree the Price does not include any amount on account of any GST. If GST is payable on the supply of the Farm Milk under this Agreement, Lactalis will pay to the Supplier an amount equal to the GST at the same time that Lactalis pays the Price for the Milk.

8. Title and Risk

8.1 Title and Risk

Title to and risk in the Milk sold by the Supplier to Lactalis passes to Lactalis upon Lactalis accepting delivery of the Milk on completion of the transfer of the Milk from the storage vats at the Property into Lactalis' milk tanker.

8.2 Contaminated Farm Milk

If Milk is supplied by the Supplier to Lactalis which is contaminated and which then contaminates the other contents of a Lactalis' milk tanker, the Supplier is responsible for and must reimburse Lactalis for the cost to Lactalis of all the Milk which has been so contaminated, and the transport and disposal costs for that milk.

8.3 Rejection of Milk

- (a) The Testing and General Quality sections of the Handbook set out where Lactalis may reject Milk from Suppliers or suspend the collection of Milk from Suppliers.
- (b) Where Lactalis rejects Milk from a Supplier, it will provide written advice of such rejection or suspension as soon as practicable. Such notice will include the reasons for the rejection or the suspension, the consequences of the rejection or suspension and any fees payable by the Supplier.

8.4 Force Majeure

- (a) Where Milk which is to be supplied to Lactalis is unable to be collected by Lactalis from the Supplier due to a Force Majeure event, risk and title in such Milk remains with the Supplier and Lactalis will have no obligation to pay for the supply of that Milk.
- (b) If a Force Majeure event prevents Lactalis collecting the Milk which is to be supplied to Lactalis for any continuous period of 30 days or more, either party may, on 30 days' notice to the other, given during the period the Force Majeure continues, terminate this Agreement.
- (c) If a Force Majeure event prevents Lactalis collecting the Milk from the Property which would otherwise be supplied to Lactalis, the Supplier may, for the term of the Force Majeure event, supply its Milk to any other party.

9. Records

9.1 The parties must keep originals or copies of:

- (a) this Agreement;
- (b) any variations to or termination of this Agreement; and
- (c) any notices or statements issued under this Agreement or the Dairy Code, for the period set out in subclause 9.2 below.

9.2 A record, or a copy of a record, must be kept for the period:

- (a) starting on the day on which the record is made or given; and

- (b) ending on the last day of the 6 years beginning on the day this Agreement ends.

10. Termination

10.1 Termination rights

Either party may terminate this Agreement:

- (a) if the other party commits a Material Breach of this Agreement and, in the case of a Material Breach capable of remedy, fails to remedy the Material Breach within 14 days (or any longer period agreed between the parties) after receipt of a written notice by the party not in default, giving full particulars of the Material Breach and requiring it to be remedied;
- (b) immediately in the event that the other party (if an individual) is declared bankrupt;
- (c) immediately in the event that the other party (if a corporation) enters into liquidation or any other form of external administration;

and the terminating party must give to the other party, as soon as practical after the terminating party terminates the agreement:

- (d) written notice of:
 - (i) the termination;
 - (ii) the reason for the termination; and
 - (iii) the day the termination takes effect.

10.2 Termination does not prejudice existing rights

Termination of the Agreement does not prejudice the rights of either party which accrued prior to the date of termination.

11. Variation

11.1 Variation

- (a) Subject to clause 11.2, this Agreement may only be varied by the parties agreeing in writing to such variation.
- (b) The Price must not be varied except to increase the Price by agreement of the parties in writing.

11.2 Unilateral Variation by Lactalis

- (a) Lactalis may vary this Agreement where there is a change in a Commonwealth, State or Territory law:
 - (i) To the extent necessary to comply with the changed law; but
Without reducing the Price.

- (b) Lactalis may not vary this Agreement in accordance with clause 11.2(a) where the variation requires or will result in a retrospective step down (as defined in section 27(2) of the Code) in the Price.
- (c) If the Processor unilaterally varies this Agreement under subclause 11.2(a), the Processor must as soon as practicable after the variation provide the Farmer with:
 - (i) the variation; and
 - (ii) written notice of:
 - (A) the reason for the variation; and
 - (B) the day the variation takes effect.

12. Resolution of complaints and disputes

12.1 Notice of complaint

If a party to this Agreement has a complaint arising out of or in connection with this Agreement then the matter must be dealt with in accordance with the procedures set out in Schedule 7 – Disputes

13. General

13.1 Entire agreement

This Agreement together with the Handbook contains the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes any prior agreement or understanding between the parties in relation to that subject matter.

13.2 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement.

13.3 Notices

Any notice or other communication required to be given under or in connection with this Agreement by:

- (a) the Supplier to Lactalis, will be given to their Supplier Services Manager, whose contact details are set out in the Handbook; and
- (b) by Lactalis to the Supplier, will be given to the Supplier at the address/s set out in item 2 of Schedule 2.

13.4 No assignment

- (a) A party cannot assign or otherwise transfer their rights or obligations under this Agreement, unless to a related party, without the prior written consent of the other party which may be granted or withheld at the other party's absolute discretion.
- (b) For the purposes of this clause, assignment includes the change in control of the ability to supply the Farm Milk under this Agreement.

13.5 Governing law

This Agreement is governed by and construed in accordance with the laws of the Territory and the parties agree to submit to the jurisdiction of the courts of that State.

Schedule 7 – Disputes

1. Dispute Resolution

Where a dispute arises under this Agreement, the parties may elect to resolve the matter by:

- (a) Use of the Lactalis internal complaints handling procedure set out at Item 2 below; or
- (b) By mediation, as set out at Item 3 below.
- (c) For the avoidance of doubt, the parties acknowledge that if the dispute is not resolved by the internal complaints handling procedure, it may be referred to mediation.

2. Internal Complaints Handling

2.1 Notice of complaint

If a party to this Agreement has a complaint arising out of or in connection with this Agreement then, the party so concerned (the **complainant**) must notify the other party (the **respondent**) in writing (**notice of complaint**) of the following:

- (a) The nature of the complaint;
- (b) That the complainant wishes the complaint to be dealt with in accordance with the complaint handling procedure set out below; and
- (c) The outcome the complainant wants.

2.2 Acknowledgement

Within 5 working days after receiving the notice of complaint, the respondent must give written acknowledgment to the complainant stating:

- (a) That the notice of complaint has been received; and
- (b) The steps to be taken to deal with the complaint.

2.3 Complaint handling procedure

- (a) Within 14 days of receipt of a notice of complaint, the complainant and the respondent and the Lactalis Complaints Handling Officer must meet and discuss in good faith in order to resolve the complaint.
- (b) If within 28 days of receipt of a notice of complaint, the complaint remains unresolved the complaint must be referred, at the request of either party, to a Senior Executive of Lactalis (or their nominee) to meet with the complainant and the respondent and discuss in good faith in order to resolve the complaint.

- (c) If within 42 days of receipt of a notice of complaint the complaint remains unresolved then the parties agree that the complaint shall constitute a dispute to be resolved in accordance with the dispute resolution procedure set out below.

3. Mediation

3.1 Appointment of mediator

- (a) Mediation Adviser means the person appointed as mediation adviser under regulation 44 of the Dairy Code by the Minister for Agriculture, Drought and Emergency Management (Federal).
- (b) The parties must request the Mediation Adviser to appoint a mediator for the dispute.
- (c) The Mediation Adviser:
 - (i) must appoint a mediator within 14 days after receiving the request under subclause 3.1(b) unless the Mediation Adviser is satisfied that the complaint giving rise to the dispute:
 - (A) is frivolous or vexatious; or
 - (B) has previously been the subject of another mediation; and
 - (ii) must give the parties to the dispute, in writing, details of the mediator appointed.

3.2 Conduct of mediation

- (a) Subject to subclause 3.2(b), the mediator must decide:
 - (i) how the mediation is to be conducted (for example, by telephone or in meetings); and
 - (ii) the time and place for the mediation; and
 - (iii) the day the mediation commences for the purposes of this Agreement.
- (b) The mediation must be conducted in Australia.

3.3 Notice of commencement of mediation

Within 14 days after the mediation has commenced, the mediator must notify the Mediation Adviser, in writing, that the mediation has commenced and of the nature of the dispute.

3.4 Attendance at mediation

- (a) Each party to the dispute must attend the mediation and attempt to resolve the dispute.
- (b) For the purposes of subclause 3.4(a), a party is taken to attend a mediation to attempt to resolve a dispute if the party is represented at the mediation by a person who has authority to enter into an agreement to settle the dispute on behalf of the party.

3.5 Notice of successful mediation

- (a) If an agreement is reached in relation to the dispute, the mediator must, within 14 days after the agreement is reached:

- (i) set out, in writing, the terms of the agreement; and
 - (ii) give a copy of the terms to each party to the dispute; and
 - (iii) notify the Mediation Adviser that an agreement has been reached.
- (b) The party who requested the mediation may, at any time, withdraw the complaint that is the subject of the dispute by notice in writing to the other party to the dispute and the mediator.

3.6 Termination of mediation

- (a) The mediator conducting a mediation of a dispute in accordance with this Agreement:
 - (i) may terminate the mediation at any time if the mediator is satisfied that a resolution of the dispute is not likely to occur; and
 - (ii) must terminate the mediation if the party who requested the mediation requests the mediator to do so.
- (b) If a dispute that is the subject of mediation in accordance with this Agreement is not resolved within 30 days after the mediation commenced:
 - (i) the respondent to the mediation may ask the mediator to terminate the mediation; and
 - (ii) the mediator must do so.
- (c) If the mediator terminates a mediation under subclauses 3.6(a) or 3.6(b), the mediator must issue a certificate stating:
 - (i) the names of the parties to the mediation; and
 - (ii) the nature of the dispute that was the subject of the mediation; and
 - (iii) that the mediation has been terminated; and
 - (iv) that the dispute has not been resolved.
- (d) The mediator must give a copy of the certificate to:
 - (i) the Mediation Adviser; and
 - (ii) each party to the dispute.

3.7 Costs of mediation

- (a) Each party to a dispute that was the subject of a mediation must pay half the costs (if any) of the mediation (being all reasonable costs associated with the conduct of the mediation).
- (b) Each party to a dispute that was the subject of a mediation must pay that party's costs of attending the mediation.

4. Other matters

4.1 Court Proceedings

The parties must comply with this Schedule before commencing court proceedings in relation to a complaint or a dispute between the parties in relation to or arising under this Agreement, except proceedings for urgent interlocutory or final relief. If a dispute is not resolved by mediation then, either party may, if it wishes, commence court proceedings.

4.2 Confidentiality

Any information or documents disclosed by a party in the course of the complaint handling procedure or dispute resolution procedure must be kept confidential and may only be used in an attempt to resolve the relevant complaint or dispute.

4.3 Ongoing obligations

Despite the existence of a complaint or dispute between the parties arising out of or in relation to this Agreement, each party must continue to comply with its obligations under this Agreement.